

Civil Writ Petition No. 15795 of 1995

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Civil Writ Petition No. 17301 of 1995

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No. 15795 of 1995

Date of Decision: 9.9.2016

Balraj and others

.....Petitioners

Vs.

Financial Commissioner Haryana and others

.....Respondents

ii)

Civil Writ Petition No. 17301 of 1995

Partap Singh

.....Petitioner

Vs.

Financial Commissioner Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate
for the petitioners.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Girish Agnihotri, Sr. Advocate with
Mr. Arvind Seth, Advocate
for respondents No. 5 to 16.

RAMESHWAR SINGH MALIK J. (ORAL)

These two identical writ petitions bearing CWP Nos. 15795 and 17301 of 1995 are being decided together vide this common order, because both these writ petitions are based on similar facts and raise same questions of law. However, for the facility of reference, facts are being culled out from

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CWP No. 15795 of 1995.

Both these writ petitions are directed against impugned orders dated 16.9.1995 (Annexure P-5) passed by the Financial Commissioner, Haryana, whereby he accepted two similar references made to him by the Commissioner, Hisar Division, vide order dated 5.8.1986 (Annexure P-4). Vide impugned order dated 16.9.1995, Financial Commissioner set aside the order dated 19.6.1971 (Annexure P-1) passed by the Assistant Collector 1st Grade, allowing two purchase applications moved by the petitioners-tenants under Section 18 of the Punjab Security of Land Tenures Act, 1953 ('the Act of 1953' for short) and also appellate order dated 20.12.1983 (Annexure P-3) passed by the Collector, Hisar, who dismissed appeal of the landowners and their vendees against order dated 19.6.1971.

Notice of motion was issued in both these writ petitions on 28.11.1995 by a Division Bench of this Court and operation of the impugned order dated 16.9.1995 (Annexure P-5), in both these writ petitions, was stayed. Written statement was filed by respondents No. 5 to 8 in both these writ petitions, who were the vendees of original big landowner-Sohan Lal. Other set of private respondents is that of legal representatives of original big landowner-Sohan Lal, but they did not file any separate written statement. Both these sets of private respondents No. 5 to 8 and 9 to 16 are being represented by the same learned counsel.

Learned senior counsel for the petitioners, in both these cases, while referring to orders Annexures P-1 and P-1/A, submits that petitioners being old tenants, applied for purchase of land under their common big landowner-Sohan Lal, by moving appropriate applications under Section 18 of the Act of 1953 on 9.4.1968, because the petitioners were fulfilling all

the requirements for purchasing the land, as eligible tenants. During pendency of the purchase applications of the petitioners under Section 18 of the Act of 1953, Sohan Lal-big landowner sold some part of his land to Chhabila and others, vide sale deed dated 29.1.1970. On the basis of said sale deed and claiming themselves to be bonafide purchasers, Chhabila etc.-vendees of Sohan Lal, filed an application before Assistant Collector 1st Grade, praying that till the surplus area case declaring permissible area of big landowner-Sohan Lal is decided, declaring land surplus in his hands by appropriate order passed by the competent authority, purchase applications of the tenants-petitioners may not be proceeded further.

Learned senior counsel for the petitioners further points out that said application moved by the vendees of Sohan Lal-big landowner was rightly rejected by Assistant Collector 1st Grade, Hansi, vide his order dated 26.11.1970 (Annexure P-1). Two appeals were filed against this order dated 26.11.1970 but both the appeals filed by the vendor Sohan Lal as well as his vendees, were dismissed by the Collector, Hisar, vide his order dated 10.5.1971 (Annexure P-1/A). These orders were not challenged any further and became final between the parties.

He would next contend that after considering all the relevant facts and eligibility of the petitioners-tenants for purchase of land under Section 18 of the Act of 1953, besides granting opportunity of being heard to the big landowner-Sohan Lal as well as to his vendees-Chhabila etc, Assistant Collector 1st Grade, Hansi, vide his order dated 19.6.1971 (Annexure P-2), rightly allowed the purchase applications of the petitioners-tenants under Section 18 of the Act of 1953. Value of the land was assessed and the same had been deposited by the petitioners-tenants.

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He submits that

since the petitioners were continuing in old and settled cultivating possession about which their applications under Section 18 of the Act of 1953 were rightly allowed by the competent authority vide Annexure P-2, petitioners became absolute owners in possession, immediately after depositing the amount assessed towards price of the land.

Making a specific reference to para 6 of the order dated 19.6.1971 (Annexure P-2), learned senior counsel for the petitioners submits that Sohan Lal was undisputedly a big landowner, as he was having land in as many as 7 villages and his total holding was 90 acres of land. He submits that Assistant Collector 1st Grade, vide his order dated 19.6.1971 (Annexure P-2), allowed two similar purchase applications under Section 18 of the Act of 1953. Two appeals came to be filed against each of the tenants. During pendency of the appeals filed by big landowner-Sohan Lal as well as his vendees-Chhabila etc, Sohan Lal died on 19.8.1978. Since in the meantime, new Act, i.e. the Haryana Ceiling of Land Holdings Act, 1972, came into force, legal representatives of big landowner-Sohan Lal, claimed themselves to be small landowners and they were declared as such, vide order dated 31.3.1982.

Learned senior counsel submits that Collector, Hisar, vide his factually correct and legally justified order dated 20.12.1983 (Annexure P-3), rightly dismissed both the appeals filed by the big landowner and his vendees. The later developments, including sale by big landowner as well as his death, will not adversely affect the right of absolute ownership of the petitioners-tenants, which came to be crystalised in their favour, the moment they deposited the amount towards price of the land purchased by them, vide order dated 19.6.1971 passed by the competent authority. However,

since the Commissioner, Hisar Division, Hisar as well as Financial Commissioner, Haryana, while passing their respective impugned orders contained in Annexures P-4 and P-5, have miserably failed to appreciate the abovesaid factual as well a legal aspects of the matter, the impugned orders have resulted in miscarriage of justice and the same are liable to be set aside.

Concluding his arguments, learned senior counsel for the petitioners submits that once the relevant material facts, viz. i) Sohan Lal was a big landowner; ii) being old tenants, petitioners were eligible for purchase of land under Section 18 of the Act of 1953; iii) petitioners purchased land within tenants' permissible area vide order dated 19.6.1971 (Annexure P-2), passed by Assistant Collector 1st Grade; (iv) orders contained in Annexures P-1 P-1/A were never challenged either by the big landowner or his vendees; and v) petitioners deposited the total amount assessed towards the value of land purchased, have gone undisputed, petitioners became absolute owners in possession of the land in dispute and their vested right could not have been taken away by subsequent events, including the sale by big landowner in favour of his vendees and also the death of big landowner, because Section 18 of the Act of 1953 has an over-riding effect on Section 10-A of the Act of 1953 and the legal heirs of big landowner-Sohan Lal would have no right under the Act of 1972 for re-opening the surplus area case, after the death of original big landowner-Sohan Lal.

In support of his arguments, learned senior counsel for the petitioners places reliance on the following judgments:-

- i) Rameshwar and others Vs. Jot Ram and another, 221975 PLJ, 1975

454 (SC)

ii) Mam Raj Chhoga and others Vs. State of Punjab and others,
AIR 1970 Punjab & Haryana 23 (P&H) (Full Bench)

iii) Amar Singh Vs. State of Punjab and another, 1967 (VII),
Current Law Journal 168 (P&H)

iv) Amarya Vs. Mohd. Hayat Khan and others, 1982 PLJ 153

v) Shashi Kumar and others Vs. Financial Commissioner,
Haryana and others, 2011 (SUPPL). CCC 079 (P&H)

vi) Kamla Devi Vs. Financial Commissioner (Appeals), Punjab
and others, 2013 (3) RCR (Civil) 310 (P&H)

vii) Arjun Dass and others VS. State of Haryana and others,
2015 (4) RCR (civil) 400 (P&H).

He prays for setting aside the impugned orders, by allowing both
these writ petitions.

Per contra, learned senior counsel for both sets of private respondents, i.e. respondents no. 5 to 8, who were vendees of original big landowner-Sohan Lal and respondents No. 9 to 16, who are legal representatives of Sohan Lal, submits that once the land was not declared surplus in the hands of big landowner-Sohan Lal, purchase applications moved by the petitioners under Section 18 of the Act of 1953, could not have been allowed. He further submits that orders Annexures P-1 and P-1/A were since only interim orders and merged into final order Annexure P-2, whereby purchase applications of the petitioners-tenants were illegally allowed, final order Annexure P-2 was rightly challenged by the big landowner, as well as his vendees, by way of two separate appeals before the Collector, but he failed to appreciate true facts of the case, while dismissing both the appeals vide Annexure P-3. He would next contend that the Commissioner, Hisar Division, Hisar, and Financial Commissioner,

Haryana, committed no error of law, while passing their respective impugned orders Annexures P-4 and P-5 and the same deserve to be upheld.

Learned senior counsel for the respondents submits that even if original big landowner-Sohan Lal failed to select his permissible area within the stipulated period, as provided under Section 5-A of the Act of 1953, the revenue authorities were at liberty to proceed further declaring the area as surplus in the hands of big landowner namely Sohan Lal. However, since the revenue authorities did not declare any area surplus in the hands big landowner, during his life time and his vendees were bonafide purchasers for due consideration, legal heirs of big landowner-Sohan Lal were rightly declared small landowners. Since there was no surplus area in the hands of legal heirs of big landowner, order 19.6.1971, Annexure P-2, allowing the purchase applications of the petitioners, as well as appellate order dated 20.12.1983, Annexure P-3, were rightly set aside by the Financial Commissioner.

To buttress his arguments, learned senior counsel for the private respondents places reliance on the following judgments:-

- (i) State of Punjab (Now Haryana) and others VS. Amar Singh and another, 1974 PLJ, 74 (SC)
- (ii) Jee Ram and others VS. Gobind and others, 1971 PLJ 766 (P&H)
- (iii) Banta Singh Vs. Smt. Sito, 1971 PLJ 769 (P&H)
- (iv) Shri Shanti Swarupa Vs. The State of Punjab etc. (decided on 3.4.1974 in C.W. No. 2020 of 1973 (P&H)
- (v) Harpal Singh Vs. Assistant Registrar Cooperative Societies, Rupar, 1974 PLJ 113 (P&H)
- (vi) Ganpat Singh Vs. Financial Commissioner, Haryana and others 1978 PLJ 291 (P&H)

(vii) Sada Nand and another Vs. Financial Commissioner, Haryana and others, 1979 PLJ 481 (P&H)

(viii) Kuldip Singh (through LRs) and others Vs. State of Punjab and others, 2014 (1) RCR (civil) 672 (P&H)

(ix) Baldev Raj and others Vs. Financial Commissioner, Haryana and others, 2012 ILR 2 Punjab and Haryana, 619

(x) Puran Singh and others Vs. State of Haryana and others, 2012 (2) PLR 234 (P&H)

(xi) Bal Krishan (through LRs) and others Vs. State of Haryana and others, (CWP No. 15250 of 1992, decided on 3.9.2013). (P&H)

He prays for dismissal of both the writ petitions.

Having heard learned senior counsel for the parties at considerable length, after careful perusal of the record of the cases and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of these cases, referred to hereinabove, both the writ petitions deserve to be accepted. Since the impugned orders have been found suffering from patent illegality and perversity, besides running contrary to the law laid down by the Hon'ble Supreme Court as well as this Court, the same cannot be sustained. To say so, reasons are more than one, which are being recorded hereinafter.

Some of the basic facts, which have gone undisputed before this Court, deserve to be highlighted. Petitioners were eligible tenants for purchasing the land under their tenancy, within the limits of their tenants' permissible area, as per the relevant provisions contained in the Act of 1953 and particularly Section 18 thereof. Sohan Lal was a big landowner having about 90 acres of land, in as many as seven villages, which is clear from para 6 of the order dated 19.6.19071 (Annexure P-2), at page 22 of the

paper book. As per the provisions contained in Section 5-A of the Act of 1953, big landowner-Sohan Lal was under legal obligation to reserve his permissible area, by selecting numbers of his choice, out of his total holdings, under intimation to the concerned revenue authorities, however, he did not do so for the reasons best known to him.

To deal with such a situation, Sections 5 (A), (B) and (C) came to be inserted in the Act of 1953 by Punjab Act No. 46 of 1957. As per Section 5-A of the Act of 1953, every landowner or tenant, who owns or holds land in excess of his permissible area, was under legal obligation to declare his permissible area, by filing an affidavit in respect of the lands owned or held by him, within a period of six months from the commencement of Punjab Act No. 46 of 1957. Section 5-B of the Act of 1953 deals with the situation where the landowner fails to select his permissible area. Similarly, Section 5-C of the Act of 1953, provides for imposition of penalty for failure of furnishing declaration by the landowner or tenants, with regard to their respective permissible areas. Section 2 (3) of the Act of 1953 provides definition of permissible area, whereas Section 2 (5) (a) provides definition of surplus area.

Since the cases in hand revolve around the interpretation of provisions contained in Sections 2 (3), (5-a), Section 5-A, 5-B and 5-C as well as Section 18 of the Act of 1953, it would be appropriate to reproduce the relevant parts thereof and the same read as under:-

2 (3) "Permissible area" in relation to a land-owner or a tenant means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres:"

XX XX XX

[(5-a)] “*Surplus Area*” means the area other than the reserved area, and where, no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C and includes the area in excess of the permissible area selected under section 19-B but it will not include a tenant's permissible area:

5-A. Declarations supported by affidavits to be furnished by certain land-owners and tenants- Every landowner or tenant, who owns or holds land in excess of the permissible area and where land is situated in more than one Patwar Circle, shall furnish, within a period of six months from the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1957, a declaration supported by an affidavit, in respect of the lands owned or held by him in such form and manner and to such authority as may be prescribed.

5-B. Selection of permissible area and consequence of failure to select - (1) A land owner who has not exercised his right of reservation under this Act, may select his permissible area and intimate the selection to the prescribed authority within the period specified in section 5-A and in such form and manner as may be prescribed:

Provided that a landowner who is required to furnish a declaration under section 5-A shall intimate his

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selection along with that declaration.

(2) *If a land-owner fails to select his permissible area in accordance with the provisions of sub section (1), the prescribed authority may, subject to the provisions of section 5-C, select the parcel or parcels of land which such person is entitled to retain under the provisions of this Act;*

Provided that the prescribed authority shall not make the selection without giving the land owner concerned an opportunity of being heard.

5-C Penalty for failure to furnish declaration - (1) *If a land-owner or tenant fails to furnish the declaration supported by an affidavit as required by section 5-A, the prescribed authority not below the rank of Collector may, by order, direct that the whole or part of the land of such land-owner or tenant in excess of ten standard acres to be specified by such authority shall be deemed to be the surplus area of such land-owner or tenant and shall be utilised by the State Government for the purpose mentioned in section 10-A:*

Provided that no such order shall be made without giving the land-owner or tenant concerned an opportunity of being heard.

(2) *Where a land-owner or tenant who is required to furnish a declaration under section 5-A fails so to do, the prescribed authority may in respect of him obtain the information required to be shown in the declaration through such agency as it may deem fit.*

18. Rights of certain tenants to purchase land - (1)

Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a

small land-owner –

(i) Who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

(ii) xx xx xx

(iii) xx xx xx

shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of land owner.....

A bare reading of the abovesaid provisions of law would make it crystal clear the Legislature has laid special emphasis on the rights of the tenants to purchase the land. This is the reason that Section 18 starts with non-abstante clause and it will have an over-riding effect on other provisions of the Act of 1953, which are inconsistent with the provisions contained in Section 18. This is what has been held by this Court on more than one occasions.

In view of the abovesaid peculiar fact situation obtaining in the present case, it is apparent that big landowner-Sohan Lal as well as his vendees, made their joint efforts to stall the proceedings in the purchase applications moved by the petitioners but they failed, as it is clear from orders Annexures P-1 and P-1/A. On the one hand, big landowner-Sohan Lal was proceeding on his malafide approach, while not selecting his permissible area, despite the fact that he was under legal obligation to do so, as mandated by Section 5-A of the Act of 1953 and on the other hand, he sold some area to Chabbilla etc., during pendency of purchase applications.

A careful perusal of the record of the case would show that the original big landowner was a clever and shrewd man.

omission was that he did not select his permissible area, as a clever device adopted by him, leaving the revenue authorities guessing. Second illegality committed by him was that he sold the land to Chhabila etc., despite knowing fully well that purchase applications moved by the petitioners were pending before the competent authority. It is also clear that big landowner-Sohan Lal was trying to keep the matter pending, so that the land may not be declared surplus in his hands, during his life time.

In view of the peculiar facts and circumstances of the case, it is also apparent on record that the revenue authorities were also in collusion with the big landowner, while not declaring his land surplus for long 25 years, till his death on 19.8.1978. It is so said, because there was no legal impediment faced by the revenue authorities, in declaring the land surplus in the hands of Sohan Lal. The dishonest and malafide attempt repeatedly made on behalf of the landowner was apparent on record and there was a strong reason for it. He wanted to achieve his ulterior motive to defeat the aims and objects of the Act of 1953 and also the statutory right of the petitioners-tenants to purchase the land under their tenancy.

Another equally important question of law that falls for consideration of this Court is, whether the landowner who seriously defaulted can be granted the benefit of his own wrong, by denying genuine claim of the tenants like the petitioners herein. The answer to the abovesaid question is and has to be in the negative. It is so said, because when a pointed question was put to the learned senior counsel for the private respondents, as to what was the reason or sufficient cause with the defaulting landowner-Sohan Lal, for not selecting his permissible area within the statutory period, he had no answer and rightly so, it being a

matter of record. No reason, much less cogent reason, is forthcoming to justify serious omission on the part of the big landowner-Sohan Lal, in this regard.

The next question of law that arises for consideration of this Court is, whether in such a situation, purchase applications of the tenants under Section 18 of the Act of 1953, can be kept pending and the revenue authorities would be at the mercy of the defaulting landowner, who has not selected his permissible area, as in the cases in hand. Owing to the Objects and Schemes of the Act of 1953 as well as the Act of 1972, the inevitable conclusion is that, decision of the purchase applications moved by the tenants cannot be left at the mercy of the landowner, who was a wrongdoer and was bent upon to defeat the objects of the Act, with a view to achieve his ulterior motive. Having said that, this Court feels no hesitation to conclude that Assistant Collector 1st Grade rightly allowed purchase applications of the petitioners, vide order dated 19.6.1971 (Annexure P-2). Reading of 2nd para of order Annexure P-3 at page 29 of the paper book would show that Sohan Lal himself filed appeals and got them adjourned sine die vide order dated 14.4.1978. Similarly, Collector committed no error of law, while dismissing the appeals of the landowners and his vendees, vide a factually correct and legally justified order dated 20.12.1983 (Annexure P-3) and both these orders deserve to be upheld and restored.

The abovesaid view taken by this Court also finds support from a direct judgment of this Court in **Amarya's case** (supra), wherein the LPA Bench of this Court was dealing with an identical fact situation. The relevant observations made by the Division Bench in para 2 and 3 of its judgment in **Amarya's case** (supra), which can be gainfully followed in the

present case, read as under:-

“2. The learned counsel for the appellant submitted that in view of the order of the Collector dated 16th June, 1961 (Annexure R-1), there was no question of determining the surplus area again as directed by the learned Single Judge. According to the learned counsel it was the duty of the writ petitioners to place this document on the record along with the writ petition. Failure to do so on their part has resulted in obtaining the order under appeal, which apparently is not sustainable in view of this order. The argument proceeded that as a matter of fact this was not their case even before the Financial Commissioner. The only contention raised there was that they should be provided with an opportunity to have their permissible area demarcated under Section 5-B(2) of the Act. On the other hand learned counsel for the respondents argued that what they wanted was the determination of the surplus area and not the demarcation as stated by the Financial Commissioner and the said order of the Financial Commissioner has been rightly quashed in the writ petition. It was also submitted that the said order of the Collector dated 16th June, 1961 (Annexure R-1) is still under consideration by the authorities themselves and, therefore, the same cannot be treated as final.

3. After hearing learned counsel for the parties we find merit in the contention raised on behalf of the appellant. In view of the order dated 16th June, 1961, of the Collector (Annexure R-1) it could not be successfully contended that the surplus area of the landowners has not been determined. The question of demarcation is different from determining the surplus area, and when after the declaration of surplus area there does not occur any change in possession, the landowner is deemed to have selected to the extent permissible, his permissible area out of the land in his possession. Moreover, it has been rightly observed by the learned Financial

Commissioner that :-

"It is totally wrong to permit a defaulting landowner who omits to reserve or select his permissible area, to take advantage of his default, for purposes of blocking or delaying the purchase rights of the tenants under Section 18 of the Punjab Security of Land Tenures Act, particularly when the default, as in this case, is without sufficient cause."

The land with the tenant-appellant was surplus and he was on the land when the application was made. In these circumstances no infirmity or illegality could be found in the said order of the learned Financial Commissioner, and the learned Single Judge seems to have erred in interfering with the same in writ jurisdiction. The said order was quashed as observed earlier, because the order of the Collector Annexure R-1 was not brought to the notice of the learned Single Judge by either party. Once the surplus area of the landowners already stands determined, no direction can be given to determine the same afresh."

Similarly, another Division Bench of this Court in relevant part of para 16 to 18 of the judgment (irrelevant part excluded), in **Amar Singh's case** (supra), held as under:-

"I would, therefore, hold that section 18, wherever it is applicable, overrides section 10-A of the Act to the extent that a purchase under section 18 effected in pursuance of orders under the Act cannot be ignored or bypassed either under clause (b) or under clause (c) of section 10-A. While determining the permissible area or surplus area of the landowner in the instant case the Collector was not sitting in appeal over the order of the Assistant Collector under section 18 and could not sit in judgment over it or criticise it or ignore it. The order of the Assistant Collector had become final and was as much binding on the Collector as on anybody else so long as it

was not set aside in appeal or revision or in any other appropriate proceedings..... It is not disputed that no appeal or revision was preferred against the order under section 18 of the Act in favour of the petitioners. The said orders had therefore become final. Things would have been different if some provision had been made by the Legislature in the Act which authorised the Collector, while determining the surplus area of the landowner to ignore a completed sale under section 18 of the Act, if the Collector found that the order of the Assistant Collector had been secured by collusion or otherwise. Counsel frankly conceded that there is no such provision in the Act. In the absence of such a provision, the Collector had no jurisdiction to ignore the completed sale under the Act on any ground whatsoever in the collateral proceedings for determining the permissible area of the landowner.....

Xx xx xx xx

In view of the law discussed by me above, I would answer all the three questions framed by me in the first paragraph of this judgment in favour of the petitioners. It is, therefore, held that :-

the expressions "transfer" and "other disposition of land" in clause (b) of section 10-A of the Punjab Security of Land Tenures Act 10 of 1953, do not include completed sales effected under section 18 of the Act;

in exercise of the powers conferred by clause (c) of section 10-A of the Act, the authorities under the Act cannot exclude from consideration an order of the Assistant Collector or Collector under section 18 of the Act, whereby a part of the holding of the landowner has "vested absolutely in the erstwhile tenant; and

if any conflict were detected between section 10-A and section 18 of the Act, the special provision of law contained in the latter section would override the earlier

and general provision.

Each of the two petitioners having become absolute owners of their respective erstwhile tenancy holdings by operation of section 18(4)(b) of the Act, their rights as such owners became absolutely immune against possible deprivation in the proceedings relating to the determination of the permissible area of surplus area of the landowner. In this view of the matter, both the writ petitions must succeed and are accordingly allowed with costs, and the impugned orders of the Collector in so far as they affect the rights of the petitioners in respect of the land acquired by them from the landowner under section 18 of the Act, are held to be non-existent and inoperative in the eye of law.”

The abovesaid judgment in **Amar Singh's case** (supra), fell for consideration before the Hon'ble Full Bench of this Court in **Mam Raj's case** (supra). After an elaborate discussion on the view expressed in **Amar Singh's case** (supra), the Hon'ble Full Bench approved the same. The observations made by the Hon'ble Full Bench, as contained in para 10 to 15 and 19 in its judgment in **Mam Raj's case** (supra), which are relevant for the purpose of decision of these cases, , read as under:-

“Thus, while the provisions of section 18 are protective for the tenants and enable them to buy the lands which have been in their continuous occupation for six years or more in areas falling outside the reserved or permissible limits of the landowners, section 10-A deals with the accretions of parcels of land which have been added to the holding of landowners, both by voluntary transfers or by the process of inheritance or gift, which are liable to be taken over for the utilizations as surplus area for the settlement of tenants. The land which a landowner cannot acquire except in specific cases beyond the permissible limits is made subject, to a charge for the resettlement of ejected tenants. It

would be manifest that methods may be adopted to get back the lands which have fallen as surplus areas by collusive decrees or otherwise, and to provide for such a contingency it has been said in clause (c) of section 10-A that any judgment, decree or order of a Court or other authority obtained after the commencement of this Act" and tending to diminish the surplus area of a person shall be ignored. The object and purpose of section 10-A is separate and distinguishable from section 18 and this is precisely what has been emphasised in Amar Singh v. State of Punjab, (supra).

In Amar Singh's case, Shrimati Lachhman was a big landowner in the sense that she was not a small landowner and out of the vast area under her ownership, two tracts of land were under the tenancy of Chandu and Siri Chand and in respect of some land a gift had been made in favour of Amar Singh, a son-in-law of the landowner. While proceedings for surplus area were being taken, Amar Singh and his brother Indraj applied for purchase of lands under section 18 of the Act before the Assistant Collector which they, claimed had come under their tenancies and were not included in the reserved area of the landowner. These applications were granted by the Collector and subsequently in the computation (if the surplus area the orders passed by the Collector under section 18 were ignored with the result that the lands which had been purchased by Amar Singh and Indraj were treated as surplus areas. In speaking for the Court, Narula, J., laid down three propositions of law which appear to us to be unexceptionable.

In the first place, it was said that the purchase of land under section 18 of the Act did not amount to a transfer within the meaning of clause (b) of section 10-A, such a process of transfer not being a volitional disposition of the

landowner. Whether the landowner opposes the purchase or not, the acquisition of land in consequence of the right bestowed on the tenant under section 18 cannot be treated as a transfer.

Secondly, an order passed by the specified authorities under section 18 of the Act cannot be regarded as "an order of other authority" mentioned in clause (c) of section 10-A which can be ignored in computation of surplus areas. As rightly observed by Narula, J., if the "other authority" referred to in section 10-A(c) is deemed to include the Assistant Collector or the Collector purporting to act under section 18 of the Act, the ameliorative provisions of this section would be "nullified and obliterated". What could be ignored in determining surplus areas under clause (c) of section 10-A is "any judgment, decree or order of a court" and the orders passed under section 18 cannot fall in any of these categories. The subsequent words "or other authority" in clause (c) of section 10-A have to be read ejusdem generis with 'judgment, decree or order of a court'.

What follows from these two propositions is, and this is the third proposition, that even if there is a conflict between sections 10-A and 18 of the Act, the provisions of the latter must prevail.

We do not think that there is any conflict at all between sections 10-A and 18 of the Act. To repeat, section 10-A is a rule of guidance, no doubt of overriding importance, laying down that the right of the State Government to utilise surplus areas would remain unaffected. Both sections 19-A and 19-B, as already pointed out refer to the authority of the State Government to resettle ejected tenants on surplus areas. Whether the surplus area is formed in consequence of the subsequent accretions of the

landowner or is carved from his original holding the right of utilisation by the State is the same.

Xx xx xx xx

The petitioners in both the petitions before us are tenants who have been allowed to purchase the lands of their respective landlords under section 18 of the Act. The orders of the Assistant Collector in both cases have been ignored in computing the surplus area on the ground that they are hit by clause (c) of section 10-A of the Act. Mr. Anand Swarup, the learned counsel for the petitioners, places reliance on the authority of the Bench decision of Amar Singh v. State of Punjab (supra) and we think that his submission is right. We do not see any reason to doubt the validity of the judgment of the Division Bench and there is nothing in the observations contained therein to throw doubt on its correctness or validity.

Similar view was expressed by two Division Benches of this Court in **Shashi Kumar's case** (supra) and **Kamla Devi's case** (supra). Following the law laid down by the Hon'ble Supreme Court on the scope and ambit of the provisions of the Act of 1953, this Court in its recent judgment in **Arjun Dass's case** (supra), held as under:-

"Apart from the aforesaid, while discussing the scope and ambit of Punjab Security of Land Tenures Act, 1953, the Hon'ble Apex Court in 'State of Punjab (Now Haryana) and others v. Amar Singh And Another' AIR 1974 SC 994 : 1974 SCC (4) 305 has held as under :-

"We have to bear in mind, the activist, though inarticulate, major premise of statutory construction that the rule of law must run close to the rule of life and the court must read into an enactment, language permitting,

that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute on imputed legislative presumptions and 'assumed social values valid in a prior era. An aware court, informed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compelled by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up."

30. Hon'ble Apex Court summed up the objects underlying the Act as follows :-

"The objects of the agrarian reform underlying the Act are: (a) to impart security of tenure; (b) to make the tiller the owner; and (c) to trim large land holdings thus creating peasant proprietorship's ensuring even distribution of land ownership. The intendment of the statute is that reservation was to be made by a landowner to enable self-cultivation, and so, landowners could eject tenants. But, since agrarian reform must promote not eviction but security of tenure, it became necessary for the State to create surplus area of a considerable extent, so that, the evicted tenants could be rehabilitated on such surplus lands, enjoying fixity of tenure and paying rent to the owners".

31. Any interpretation unaware of the living aims ideology and legal anatomy of an Act will miss its soul substance, a flaw which must be avoided particularly in socio-Economic legislation with a dynamic will and mission. A brief introduction about the objects of the Punjab Security of Land Tenures Act, 1953 is found in the reference order of the Full Bench (Shamsher Bahadur, J.) in '**Mam Raj Chhoga v. State of Punjab**', **Laws(P&H)-1969-3-10, (1) I.L.R. (1969) 2 Pun. & Har. 680; 682-683 :**

"The triple objects of the agrarian reform promoted by

the Act appear to be (a) to impart security of tenure (b) to make the tiller the owner, and (c) to trim large land holdings, setting sober ceilings. To convert these political slogans into legal realities to combat the evil of mass evictions, to create peasant proprietorships and to ensure even distribution of land ownerships a statutory scheme was fashioned, the cornerstone of which was the building up of a reservoir of land carved out of the large landholdings and made available for utilisation by the State for resetting ejected tenants."

Right from the beginning one of the primary objects of the statute had been to enable tenants to purchase the Landlord's right and become full owners. Every such statute has a soul and an integrated personality. The basic judicial approach must be to discover this soul of the law and strive to harmonise the many limbs to subserve the pervasive spirit and advance the social project of the enactment.

So, while deciding this question, it is held that the landowner (Pokhar Dass) had died only after the instance of sale in favour of tenants (Atma Ram and others) was already complete. The death of landowner and devolution of rights upon his heirs would, thus, not affect the right of ownership already acquired by the tenants."

At an earlier point of time, similar issue came for consideration before the Hon'ble Supreme Court in **Rameshwar's case** (supra). The Hon'ble Supreme Court laid emphasis on the object and scheme of the Act of 1953 and held that the provisions of the Act of 1953 deserve to be interpreted in the manner that objects of the Act are achieved and not defeated. It was also held that right which has been vested in favour of the tenant, cannot be taken away by subsequent events, including the death of

big landowner.

The observations made by the Hon'ble Supreme Court in para 3 to 5 and 12 of its judgment in **Rameshwar's case** (supra), which aptly apply to the facts of present case, read as under:-

Shortly put, and shorn of details, the simple contention of the appellants in these appeals is that although their prepositus Teja was a large landowner, on his death his heirs, the present appellants, became entitled to shares and, in this process of fragmentation, they became 'small landowners' within the meaning of s. 2(2) of the Act. This event occurred after the tenants had been found entitled to purchase from the landowner the lands held by them and after they had deposited the first instalment as set down in s. 18(4). The plea is that an appeal is a continuation of the original proceeding and, therefore, if there is a change of circumstances in the landlord's ownership during the pendency of the appeal, resulting in his legal representatives becoming 'small landowners', the tenants will be disentitled to purchase the land. Of course, a tenant of a 'small landowner' has no right to purchase the land. But, in the present case, the landowner admittedly was a large landowner at the time the tenants applied for purchase. Section 18(1) reads, dropping the irrelevant portions, thus:

"18. Right of certain tenants to purchase land:- (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a small landowner (i) (ii) (iii) shall be entitled to purchase from the land-owner the land so held by himin the case of a tenant falling within cl.(i) or cl.(ii) at any time, and in the case of a tenant falling within cl (ii) within a period of one year from the date of commencement of this Act."

It is common case that the application has been made in

time and that at the time such application was made, the tenants were competent to buy the land. Section 18(4) (a) and (b) may, at this stage, be read:

"18(4) (a) The tenant shall be competent to pay the purchase price either in a lump sum or in six monthly instalments not exceeding ten in the manner prescribed. (b) on the purchase price or the first instalment there of, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall, where the tenant is not already in possession and subject to the provisions of the Punjab Tenancy Act , (XVI of 1887), put him in possession thereof." It is absolutely plain that on the deposit of the first instalment of the purchase price, the tenant shall be deemed to have become the owner of the land. In the present case, all these happenings had resulted in the respondents becoming the owners.

The death of the large landowner occurred pending the appeal. the argument of counsel for the appellant, which found favour with the Financial commissioner, but failed before the High Court, is that an appeal being a re-hearing of the suit, relief must be given to the legal representatives of the original landowner who, by devolution, became small landholders. If this contention be sound, the tenants would have to be denied relief since they would be holding under small landowners. The solitary point which thus falls for determination is as to whether the subsequent event of the landowner's death at the appellate stage unsettles the right acquired by the tenants or whether the tribunal must uphold rights which have crystallized as on the date the applications were made and, in any event, the deposits of the first instalment were made by each of the tenants. We see no difficulty in answering this question against the appellant, but, in view of the persistent submission based

upon a few rulings of this Court, the Federal Court and the High Courts, made by counsel for the appellant, we may as well consider the question of law , adopting an interpretative attitude which will further and not frustrate the legislative will in case there are alternative choices for the Court. Of course, a construction which will promote predictability of results, maintenance of reasonable orderliness, simplification of the judicial task advancement by the Court of the purpose of the legislation and the judicial preference for what it regards as the sounder rule of law as between competing ones, must find favour with us. A plain reading of s. 18, without reference to consideration of subsequent events at the appellate level, yields the easy and only conclusion that the rights of parties are determined on the date they come to Court and what is an insurmountable obstacle to any other construction is that once the deposit is made the title to the land vests in the tenant. Agrarian reform law affects a considerable number of people and to keep rights uncertain over a long stretch of time till appeals and reviews and revisions and other processes are exhausted, is to inject unpredictability of results, for it is quite on the cards that a landlord may die in the long course of litigation, or other events may happen at later stages beyond the trial Court. Can rights of parties fluctuate with such uncertain contingencies ? If so, stabilization of land-ownerships, so vital to the new pattern of agrarian relations, will be postponed for a long time. Is not the judicial task simplified by adopting the golden rule that the rights of parties must be determined when they seek justice and not when the last Court has had its last say, long years after the litigation was initiated ? A system of orderliness about rights in land will result from this approach. More than all, the sounder rule of law as between rival claims to consideration of, or indifference to,

subsequent events is surely that which excludes the later event factually or legally. Such a reading of the statutory scheme rhymes well with rapid agrarian reform contemplated by the framers.

Section 2 of the Act of 1972 refers to the Directive Principles of State Policy contained in Clause b and c of Article 39 of the Constitution of India. Section 2 of the Act of 1972 and clauses (b) and (c) of Article 39 of the Constitution of India, read as under:-

Section 2 of the Act of 1972

Declaration as to giving effect to certain directive principles.-- *It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of article 39 of the Constitution of India.*

Xx xx xx

Article 39 (b) and (c)

xx xx xx

39. Certain principles of policy to be followed by the State.-*The State shall, in particular, direct its policy towards securing-*

xx xx xx

“39 (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

39 (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”

During the course of hearing, learned senior counsel for the private respondents could not point out any provision of law either from the Act of 1953 or under the Act of 1972 which may entitle legal heirs of big landowner to get the surplus area re-determined in their hands, while ignoring an order passed by the competent authority, Annexure P-2 and P-3 in the present cases, whereby purchase applications of the tenants-petitioners herein, were allowed and pursuant thereto, tenants deposited the total amount assessed towards price of the land, acquiring an absolute title over the land so purchased by them. In this view of the matter, it can be safely concluded that since the Commissioner as well as Financial Commissioner failed to appreciate true import of the legislative intent expressed in both these statutes, i.e. the Act of 1953 and Act of 1972, the impugned orders have been found patently illegal and the same cannot be sustained, for this reason also.

Coming to the judgments relied upon by learned senior counsel for the private respondents, there is no dispute about the law laid down and observations made therein. However, from close perusal of the cited judgments, none of them have been found of any help to either sets of the private respondents, i.e. respondents No. 5 to 8-vendees of original big landowner-Sohan Lal or respondents No. 9 to 16-legal representatives of Sohan Lal. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

The clear distinguishing feature between the cited judgments by the learned senior counsel for the private respondents and the facts of the present case is that, in none of the judgments relied upon, serious omission on the part of the big landowner was either considered or decided.

As noticed hereinabove, original big landowner-Sohan Lal had been proceeding on malafide approach, right from day one. Neither he selected his permissible area within the stipulated period, nor the respondent authorities decided surplus area case of the big landowner. No sufficient reasons have been shown either on behalf of the big landowner or on behalf of authorities in this regard. The big landowner also made unsuccessful attempts to keep the purchase applications of the petitioners-tenants pending.

In such a situation, competent authority rightly allowed the purchase applications of the petitioners-tenants, vide a reasoned and speaking order Annexure P-2. The Collector also committed no error of law, while dismissing the appeals of the big landowner and his vendees vide order Annexure P-3. The big landowner could not have derived any benefit out of his own wrong. Granting any such benefit to the big landowner or even to his legal representatives, would be contrary to the basic principles of natural justice, besides it shall defeat the very aims and objects of the Act of 1953 as well as the Act of 1972.

For the purpose of deciding the purchase applications moved under Section 18 of the Act of 1953, under the circumstances obtaining in the cases in hand, there would be no requirement of vesting of land in the State. Keeping in view the mandatory provisions of law contained in the Act of 1953, it would amount to deemed selection of landowner's

permissible area, because decision of purchase application of the tenants would not depend on the mercy of the landowner. It is so said because if the big landowner does not select his permissible area without any sufficient and bonafide reasons, he must face the adverse consequences. Further, legal representatives of big landowner-Sohan Lal would have no right under the Act of 1972, for re-determining the surplus area case, after the death of Sohan Lal, because under the Act of 1972, it would amount to deemed determination of surplus area in the hands of the original big landowner. Learned senior counsel for private respondents could not refer to any contrary law or raise any meaningful argument in this regard.

It is neither pleaded nor argued case on behalf of both sets of the private respondents, i.e. vendees of big landowner and his legal representatives, that petitioners were not eligible tenants for purchase of land under their tenancy. The area which was allowed to be purchased by the petitioners, by the competent authority, was not from the reserved area of landowner's permissible area. Under these circumstances, once the petitioners were allowed to purchase the land under Section 18 of the Act of 1953 and they deposited the total amount towards price of land, their right of absolute ownership would get crystalised in their favour and such a vested right cannot be taken away by the subsequent events, including the death of big landowner. Since vendees of big landowner-Sohan Lal, who are private respondents Nos. 5 to 8, purchased land for due consideration, their rights shall also be protected under Section 41 of the Transfer of Property Act, 1882, they being bonafide purchasers.

Neither any other argument was raised, nor any contrary judgments were brought to the notice of this Court, at the hands of learned

senior counsel for the private respondents.

Considering the peculiar facts and circumstances of the cases noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that since the impugned orders passed by the Commissioner as well as Financial Commissioner, contained in Annexures P-4 and P-5 respectively, are patently illegal orders, the same cannot be sustained. Accordingly, order dated 5.8.1986 (Annexure P-4) passed by the Commissioner, Hisar Division, Hisar and order dated 16.9.1995 (Annexure P-5) passed by the Financial Commissioner, Haryana, are hereby set aside. As a natural consequence, order dated 19.6.1971 (Annexure P-2) and order dated 20.12.1983 (Annexure P-3) deserve to be upheld and are hereby resorted accordingly.

Resultantly, with the abovesaid observations made, both these writ petitions stand allowed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

9.9.2016
Ak Sharma

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No